

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-145496-09
Date: MARCH 11, 2010

Legend

Taxpayer	=
Accountant	=
Trust	=
Year 1	=
Year 2	=
Date 1	=
Date 2	=
Date 3	=

Dear :

This responds to your letter dated October 12, 2009 from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an election out of the automatic allocation of generation-skipping transfer (GST) tax under § 2632(c)(5)(A)(i).

The facts and representations submitted are summarized as follows:

On Date 1, Taxpayer established and funded Trust, a grantor retained annuity trust, under which Taxpayer's retained interest would terminate on Date 2. Taxpayer survived the term. Under the terms of Trust, there is a possibility that a generation-skipping transfer (GST) may occur. The estate tax inclusion period (ETIP) with respect to Taxpayer's transfer to Trust closed for GST purposes on Date 2.

Taxpayer retained Accountant to prepare and file Taxpayer's Forms 709, United

States Gift (and Generation-Skipping Transfer) Tax Return, for Year 1 and Year 2. Taxpayer reported the transfer to Trust on a timely filed Form 709 for Year 1. On Date 3, Taxpayer filed her Form 709 for Year 2. However, Taxpayer failed to make the written election out of the automatic allocation of the GST exemption under § 2632(c)(5)(A)(i).

Taxpayer requests an extension of time under § 301.9100-3 to make an election out of automatic allocation of GST exemption to Trust pursuant to § 2632(c)(5)(A)(i).

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as determined in § 2632(c)(3)(B)(i).

Section 2632(c)(4) provides that, for purposes of the automatic allocation rules to GST trusts, an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the ETIP and the fair market value of such transfer shall be the fair market value of the trust property at the close of the ETIP.

Section 26.2632-1(c)(3)(ii) of the Generation-Skipping Transfer Tax Regulations provides, in pertinent part, that an ETIP terminates at the time at which no portion of the property is includible in the transferor's gross estate (other than by reason of § 2035).

Section 2632(c)(5)(A)(i)(II) provides that an individual may elect to have this subsection not apply to any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that the election may be made on a timely filed gift tax

return for the calendar year for which the election is to become effective.

Section 2642(f)(1) provides that, for purposes of determining the GST tax, when an individual makes an inter vivos transfer and the value of the property would have been includible in the individual's gross estate if the individual died after making the transfer (other than by reason of § 2035), any GST exemption allocation to the property will not be made before the close of the ETIP.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 60 days from the date of this letter to make the election out of

the automatic allocation of GST under § 2632(c)(5)(A)(i) for the transfer to Trust in Year 1 that is effective on Date 2 at the termination of the ETIP.

The election should be made on a supplemental Form 709 filed with the Internal Revenue Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709. A copy is enclosed for this purpose.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

The ruling in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs & Special Industries

By: Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter